

Judge Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN HAMBURG,

Defendant.

NO. CR04-5134RBL

GOVERNMENT'S SENTENCING
MEMORANDUM

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Gregory A. Gruber, Assistant United States Attorney for said District, submits its sentencing memorandum in this case.

A. Background

Defendant Ryan Hamburg entered a guilty plea to one count of Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, in violation of Title 18, United States Code, §§ 2252(a)(4)(B), 2252(b)(2), and 2256.

B. Facts of Offense

The defendant stipulated, as summarized from the Plea Agreement, that on February 3, 2004, he knowingly possessed between 100 and 150 images of child pornography. As reflected in the Presentence Report (PSR), the true number of photographs was well over 400 and the defendant posted some of them on the Internet.

1 C. Sentencing Calculations

2 The child pornography offense to which defendant Hamburg pleaded guilty
3 carries a maximum prison sentence of ten years. The U.S. Sentencing Guidelines,
4 which were fully in effect at the time of the plea hearing on May 17, 2004, contemplate
5 a sentencing range of 27-33 months of imprisonment. This range is based on a total
6 offense level of 18 (adjusted base level of 21, minus 3 for acceptance of responsibility),
7 at criminal history category I.¹

8 In its sentencing memorandum, the defense asks for only six (6) months custody,
9 to be followed by six (6) months in a halfway house. The government believes that this
10 number is far too low, but recognizes that some of the defense arguments for less than
11 27 months appear to have some merit.

12 In determining the appropriate Judgment in this case, this Court must consider, in
13 addition to the Sentencing Guidelines, the factors set forth in 18 U.S.C. § 3553(a).
14 Those factors include: (1) the nature and circumstances of the offenses; (2) the history
15 and characteristics of the defendant; (3) the need for the sentence to reflect the
16 seriousness of the offense, to promote respect for the law, and to provide just
17 punishment for the offense; (4) the need for the sentence to afford adequate deterrence
18 to criminal conduct; (5) the need for the sentence to protect the public from further
19 crimes of the defendant; (6) the need to provide the defendant with educational and
20 vocational training, medical care, or other correctional treatment in the most effective
21 manner; (7) the kinds of sentences available; (8) the need to provide restitution to
22 victims; and (9) the need to avoid unwarranted sentence disparity among defendants
23 involved in similar conduct who have similar records.

24 D. Sentencing Recommendation

25 The government believes that the Sentencing Guidelines, although no longer
26 mandatory, still get it right in the vast majority of cases. A term of 27 months for this

27 ¹ It should be noted that using 400 as the number of images would have further
28 increased defendant's offense level by two, raising the low end of his imprisonment range from
27 up to 33 months. A transmission charge would have carried a statutory mandatory
minimum of five years imprisonment (per 18 U.S.C. § 2252).

1 crime, especially as compared to what he could have faced under facts that he admitted
2 to the investigating agents and facts that they confirmed to be true, would not be
3 unreasonable. This may be a case, however, that this Court might find falls into the
4 small minority of instances where the Guidelines are higher than necessary. If so, we
5 ask that the Court remain mindful of the following.

6 The defendant knowingly and intentionally collected hundreds of images of child
7 pornography, some of which showed very young children engaged in very explicit
8 sexual acts. Moreover, the defendant admits to still fantasizing about having sexual
9 encounters with young boys. While the defense will no doubt respond that the
10 defendant is merely reliving in his mind his own previous consensual sexual encounters,
11 the fact that his fantasies still involve children rather than solely adults (with whom he
12 also reports having had encounters that he could relive) is major cause for concern. Any
13 doubt that Dr. Gollogly might be incorrect in his conclusions that defendant Hamburg is
14 not a sexual predator and is a low risk to re-offend, would be 100% resolved in favor of
15 the safety of minors by imposing a lengthy term of imprisonment.

16 Whatever term of incarceration is ultimately imposed, we join the Probation
17 Office in suggesting that it be followed by the maximum term of supervised release,
18 here three (3) years. In addition to the normal terms of supervision, all of the special
19 terms and conditions listed in the PSR "green sheet" should be ordered, including
20 registering as a sex offender, having no unsupervised contact with minors and no
21 Internet access, and engaging in all necessary and appropriate mental health/sexual
22 offender treatment and counseling (to include use of polygraphs and plethysmographs).

23 Restitution is not an issue in this case because the victims are largely
24 unidentifiable, and the "losses" -- of innocence; of self-confidence; of self-worth, no
25 matter how untrue or unfair -- are all but impossible to quantify monetarily. It also
26 appears that the defendant does not have resources to pay a fine, so the government does
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1 not seek the imposition of one. The special assessment of \$100 should be made due and
2 payable immediately.

3 Dated this 15th day of March, 2005.

4 Respectfully submitted,

5 JOHN McKAY
6 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2005, I electronically filed the foregoing Government's Sentencing Memorandum with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the Defendant.

s/ Sharon D. Nelson
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